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9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF WASHINGTON**
12

13 **MICHAEL L. WARNER and HOLLY**
14 **HANSEL-WARNER, Husband and Wife;**

15 Plaintiffs,

16 vs.

17 **HSBC MORTGAGE CORPORATION**
18 **(USA),** a registered Delaware corporation;
19 **EQUIFAX INFORMATION SERVICES,**
20 **L.L.C.,** a registered Georgia limited liability
21 company; **EXPERIAN INFORMATION**
22 **SOLUTIONS, INC.,** a registered Ohio
23 corporation; **TRANS UNION, LLC,** a
24 registered Delaware limited liability
25 company;

26 Defendants.
27

28 Plaintiffs allege as follows:

1. This is an action for actual, statutory and punitive damages, costs and

NO. CV-11-031-LRS

COMPLAINT FOR DAMAGES
FROM VIOLATIONS OF THE
FEDERAL FAIR CREDIT
REPORTING ACT AND THE
TORT OF DEFAMATION

JURY DEMAND

COMPLAINT FOR DAMAGES FROM
VIOLATIONS OF THE FEDERAL
FAIR CREDIT REPORTING ACT - 1



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1 attorney's fees brought pursuant to 15 U.S.C. §1681 et seq. (Federal Fair
2 Credit Reporting Act) and for the common law tort of defamation.
3

4 2. The jurisdiction of this Court is conferred by 15 U.S.C. §1681(p) and 28
5 U.S.C. 1367.
6

7 3. The Plaintiffs are each a natural person and each resides within the State of
8 Washington and within the territorial jurisdiction of the United States
9 District Court for the Eastern District of Washington. Plaintiffs are each a
10 "consumer" as defined by 15 U.S.C. §1681a(c).
11

12 4. Defendant, HSBC MORTGAGE CORPORATION (USA), (hereinafter
13 HSBC) is a corporation organized under the laws of the state of Delaware.
14 HSBC does business in the state of Washington and within the territorial
15 jurisdiction of the United States District Court for the Eastern District of
16 Washington.
17

18
19 5. HSBC is an "information provider" governed by 15 U.S.C. §1681s et seq.
20

21 6. Defendant, Equifax Information Service L.L.C., is a "Consumer reporting
22 agency that complies and maintains files on consumers on a nationwide
23 basis" as defined by FCRA, 15 USC §1682a(p). It is a limited liability
24 company organized pursuant to the laws of the state of Georgia. It does
25
26
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1 business in the state of Washington, within the territorial jurisdiction of the
2 United States District Court for the Eastern District of Washington.

- 3
- 4 7. Defendant, Experian Services Corporation (Experian), is a "Consumer
5 reporting agency that complies and maintains files on consumers on a
6 nationwide basis" as defined by FCRA, 15 USC §1682a(p). . It is a limited
7 corporation organized pursuant to the laws of the state of Ohio. It does
8 business in the state of Washington, within the territorial jurisdiction of the
9 United States District Court for the Eastern District of Washington.
- 10
- 11
- 12 8. Defendant, Trans Union L.L.C. (Trans Union), is a "Consumer reporting
13 agency that complies and maintains files on consumers on a nationwide
14 basis" as defined by FCRA, 15 USC §1682a(p). It is a limited liability
15 company organized pursuant to the laws of the state of Delaware. It does
16 business in the state of Washington, within the territorial jurisdiction of the
17 United States District Court for the Eastern District of Washington.
- 18
- 19
- 20
- 21 9. Plaintiffs' complaint results from a loan transaction in which the Plaintiffs
22 borrowed money for the purchase of real property located in Spokane County
23 which is used as their principal residence. It is a consumer transaction.
- 24

- 25 10. The consumer loan was made by Defendant HSBC. HSBC provides
- 26
- 27



1 information to the other defendants regarding the status of the Plaintiffs'
2 consumer loan. It supplies information on a monthly basis.
3

4 11. In 2010, the Plaintiffs became aware that HSBC was reporting that they had
5 made a late payment on their consumer loan in April of 2010. This
6 derogatory information was false and was causing the Plaintiffs' respective
7 credit scores to be much lower than they should.
8

9 12. Plaintiffs requested correction and deletion of the erroneous information
10 through the three major Consumer Reporting Agencies, Trans Union,
11 Equifax and Experian.
12

13 13. The National Consumer Reporting Agencies each indicated that HSBC had
14 verified the erroneous information contained in each of their respective
15 consumer reports.
16

17 14. On several occasions, plaintiffs contacted HSBC directly in an attempt to
18 resolve the erroneous credit report.
19

20 15. Plaintiffs, through an attorney, contacted HSBC in an attempt to resolve the
21 erroneous credit reporting. A representative from HSBC told the Plaintiff
22 Holly Hansel-Warner that HSBC knew the information was false but that he
23 could do nothing about it.
24
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27



- 1 16. HSBC continues to report the erroneous information to this date.
- 2 17. HSBC has full and complete knowledge that the information it is reporting to
- 3 the credit reporting agencies is erroneous.
- 4
- 5 18. HSBC has willfully reported and is willfully reporting the erroneous
- 6 information to the national credit reporting agencies.
- 7
- 8 19. The reporting of erroneous information has caused the plaintiffs' damage.
- 9 Plaintiffs have not been able to refinance their house to take advantage of
- 10 historically low interest rates. Plaintiffs have experienced denial of credit in
- 11 various forms and lost opportunities afforded persons with good credit.
- 12
- 13 20. HSBC owes a duty to the plaintiffs to report accurate information to all of
- 14 the national credit reporting agencies, and a statutory duty to maintain a
- 15 policy to correct erroneous information.
- 16
- 17
- 18 21. HSBC breached this duty by knowingly and willfully reporting erroneous
- 19 information to all of the national credit reporting agencies.
- 20
- 21 22. HSBC's breach of its duty to the plaintiffs was the direct and proximate
- 22 cause of the damages alleged in this complaint.
- 23
- 24 23. HSBC published the false information to the national credit reporting
- 25 agencies and, as a result, to all of Plaintiffs' potential lenders. These
- 26
- 27



1 publications were defamations of the plaintiffs' good name and character.

2
3 24. The defamations were done willfully and maliciously. HSBC did not have
4 any reasonable basis to believe that the erroneous information which it
5 published was true and accurate. Further, even if HSBC would attempt to
6 plead ignorance prior to April of 2010, it had all of the evidence and
7 information with which to confirm and recognize the information which it
8 published was erroneous, false and inaccurate.
9
10

11 25. HSBC's conduct constitutes the tort of defamation.

12 26. HSBC's conduct violates several provisions of the Fair Credit Reporting
13 Act.
14

15 27. HSBC violated the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b) by
16 publishing its representation within plaintiffs' credits file with national
17 credit reporting agencies without also including a notation that this debt was
18 disputed; by failing to fully and properly investigate the plaintiffs' dispute of
19 HSBC's representations; to review all relevant information regarding same,
20 and by failing to correctly report results of an accurate investigation to each
21 other credit reporting agency.
22
23
24

25 28. HSBC's system of verifying the accuracy of the information it disseminates
26
27



1 to credit reporting agencies is woefully inadequate.

2
3 29. The erroneous information being reported by HSBC has a derogatory effect
4 on plaintiffs' reputation in the community. It affects their ability to obtain
5 credit, obtain employment, obtain affordable insurance, obtain consumer
6 leases for vehicles, residence, and other items.
7

8 30. As a result of HSBC's conduct, Plaintiffs suffered damage by loss of credit,
9 loss of the ability to purchase and benefit from a credit, the mental and
10 emotional pain and anguish and the humiliation and embarrassment of credit
11 denials.
12

13
14 31. As a result of HSBC's conduct, Plaintiffs suffered damage in the form of
15 higher insurance rates, higher interest rates for credit, diminished earning
16 capacity, and loss of opportunity in business ventures.
17

18 32. HSBC's conduct, actions and inactions were willful, rendering it liable for
19 punitive damages in an amount to be determined by the Court pursuant to 15
20 U.S.C. §1681n.
21

22 33. HSBC's conduct, actions and inactions were negligent entitling the
23 Plaintiffs to recover under damages 15 U.S.C. §1681o.
24

25 34. In the process of attempting to recover their good name, the Plaintiffs sent
26
27



1 various dispute notices to the National Consumer Reporting Defendants,
2 Trans Union, Equifax and Experian.
3

4 35. Contained in these notices were sufficient data to allow the National
5 Consumer Reporting Agencies to determine that the information from HSBC
6 was false. The Plaintiffs sent copies of cancelled checks and loan statements
7 that demonstrated that the April 2010 payment was made on time.
8

9 36. The National Consumer Reporting Agencies failed in their procedure to
10 verify and correct erroneous derogatory information.
11

12 37. The National Consumer Reporting Agencies are required to implement
13 policies of verifying data published about consumers to ensure "maximum
14 possible accuracy" with regard to that information.
15

16 38. The National Consumer Reporting Agencies failed to take steps to correct
17 the Plaintiffs' information that they knew or should have known was totally
18 false. This failure is a negligent violation of the Fair Credit Reporting Act.
19

20 39. The Plaintiffs are entitled to recover costs and attorney's fees from all
21 defendants in an amount to be determined by the Court pursuant to 15 U.S.C.
22 §§1681n. and 1681o.
23

24
25 WHEREFORE, Plaintiffs pray for the following relief:
26
27



1. An award of a judgement for general and special damages for the plaintiffs in the amount proven at trial.
2. An award of judgment for statutory damages pursuant to 15 U.S.C. §1681n. *et seq.* against each Defendant.
3. An award of judgment for punitive damages as provided by the Fair Credit Reporting Act against Defendant HSBC in the maximum amount allowed by law.
4. An award of judgment for attorney fees as provided by the Fair Credit Reporting Act 15 U.S.C. §1681n.(a)(3).
5. An award of costs of the lawsuit.
6. Any other relief the court deems proper.

January 25, 2011

/s/ Timothy W. Durkop

Dated: _____

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JURY DEMAND



1 Plaintiffs demand trial by jury.
2

3 *January 25, 2011*
4 Dated: _____

/s/ Timothy W. Durkop

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